

MINUTES OF MEETING OF THE CORPORATIONS COMMITTEE
January 7, 2005

A regular meeting of the Corporations Committee (the "Committee") of the Business Law Section of the State Bar of California was held at the Offices of Pillsbury Winthrop LLP (San Francisco office) on January 7, 2005. Attendance was as follows:

MEMBERS PRESENT:

Curt C. Barwick
Christopher A. Delfino
Bruce R. Deming
James F. Fotenos
Steven K. Hazen
Mark T. Hiraide
Nina L. Hong
Victor Hsu
Lee Kolodny
Brian D. McAllister
William R. Sawyers
David M. Serepca
Lemoine Skinner III
Teri Shugart
Jennifer Lynn Sostrin
Steven B. Stokdyk
Suzanne L. Weakley
Bertha Cortes Willner*
Brian M. Wong

MEMBERS ABSENT:

Matthew R. Gemello
Brian A. Lebrecht
Stewart Laughlin McDowell
Deborah J. Ruosch
Russell J. Wood

LIAISONS AND GUESTS PRESENT: N/A

*Via Telephone

The minutes summarize discussions primarily in the order items were listed on the Agenda for the meeting previously circulated to members of the Committee, which is not necessarily the order in which the items were actually taken up at the meeting. The Committee did not take up those topics listed on the Agenda that are not described in these minutes.

I. ADMINISTRATIVE MATTERS

1. Opening Remarks and Announcements: The meeting was called to order by Co-Chairs Fotenos and McAllister at 9:30 a.m. Mr. Fotenos thanked the members of the Committee in attendance and informed them that a quorum was present.
2. Approval of Minutes of December Meeting: The minutes for the meeting on December 3, 2004 were approved.

II. AGENCY AND LIAISONS' REPORTS

1. Agency Reports: Messrs. Fotenos and McAllister reported that there would be no reports this month due to the unavailability of the various liaisons from the SEC, NASD, Secretary of State and the Department of Corporations. In lieu thereof, Mr. Fotenos reviewed a recent SEC enforcement action against Ricardo Salinas Pliego. Mr. Fotenos indicated that the case was of substantial interest to the Committee in that it was the first major instance in which a lawyer had affected a noisy withdrawal in accordance with the SEC's recently adopted Attorney Conduct Rules.
2. BLS Committee Liaison Reports:
 - Corporate Law Departments: Mr. Sawyers reported that he has had discussions with Barry Tobias, co-chair of the Corporate Law Department Committee who is taking steps to reconstitute and reinvigorate the Section. According to Mr. Sawyers, the CLDC has created an advisory board consisting of Senior Partners at various law firms across the state to assist that Committee with various plans and projects.
 - Financial Institutions: Mr. Kolodny reported that he had been in contact with the section chair and that the section appeared to be very active.
 - Non-Profit Corporations: Mr. Delfino reported that he had contacted the committee to determine whether they had a view on the new "Non-Profit Corporate Integrity Act." A brief discussion of the Act ensued.
 - Partnerships and LLCs: Mr. Deming reported that he had attended the organizational meeting of the committee in December. Mr. Deming indicated that the committee had discussed in some detail a July 2004 Attorney General's opinion concerning the definition of "professional service." According to Mr. Deming, while over sixty business are required to obtain professional licenses under the Business & Professions Code, only a few will be considered "professional" under the Beverly-Killea Limited Liability Company Act. According to the Attorney General, the determinative factor is whether the agency that regulates the business activity specifically designates it as a "profession."

III. 2004-2005 AGENDA: STATUS

1. Opinion Report: Mr. Fotenos reported that the revisions to the Opinion Report were nearly complete and that a new version (Version 9.8) would be circulated later in the month for member approval by cyber-ballot. Once approved, the Opinions Report will be sent to the Executive Committee for approval. Mr. Fotenos took comments from the members present, including comments from Mr. Skinner, and Mr. Fotenos informed the members present that he had received approximately 17 pages of comments from Mr. Hazen.

Mr. Hazen then proposed that the Opinion Report be considered a multi-term project of the committees of 2003-2004 and 2004-2005, and not solely a project of the committee of 2003-2004, and that Mr. Fotenos be recognized as an editor of the report. The members present discussed the proposal. Mr. Hazen volunteered to send a proposal for multi-term recognition for the Opinion Report to Mr. Fotenos.

Mr. Fotenos next outlined a procedure for final membership review of the Opinion Report, for voting, for Executive Committee submission and for posting on the committee's website. Mr. Hazen suggested that the committee approve the Opinion Report prior to the Executive Committee meeting scheduled for January 28th.

Mr. Fotenos then suggested that the committee consider taking on a supplemental project to create one integrated form compiling the various opinions covered by the Opinion Report. The members present discussed the proposal.

Mr. McAllister suggested that the committee consider sending an email to the committee's constituency or even the entire Business Law Section to request comments on the Opinion Report once it is posted to the committee's website. The members in attendance discussed the suggestion.

2. Guide to Organizing a California Corporation: Mr. McAllister introduced Ms. Shugart. Ms. Shugart informed the committee that that the Guide Subcommittee was meeting after the committee's meeting in order to try to finalize the Guide. Ms. Shugart informed the committee that she expected to circulate the Guide within approximately 2 weeks.
3. California Disclosure Law Comment Letter: Mr. McAllister introduced Mr. Stokdyk. Mr. Stokdyk reported to the committee that the comment letter that had been posted to the committee's extranet prior to the meeting had been approved by the Executive Committee on December 17, 2004. Mr. Stokdyk then briefly reviewed for the members present the positions taken in the comment letter, principally to repeal the law, modify the law to be similar to Nevada's corporate disclosure law, or to harmonize the law with the SEC's approach. Mr. Stokdyk informed the committee that the comment letter was going out immediately to the

Department of Corporations. Upon motion duly made and seconded, the committee approved the California Disclosure Law Comment Letter and the transmission of it to the California Department of Corporations.

Mr. Fotenos then noted for the committee that the definition of “issuer” in Section 2 of the Sarbanes-Oxley Act of 2002 modifies and is different from the definition of “issuer” in Section 3 of the Securities Exchange Act of 1934, and that the California Corporate Disclosure Law uses the broader definition of “issuer,” which includes bulletin board or pink sheet traded companies that are not filing ’34 Act reports. The members present discussed the definitions.

4. Section 710 Amendment: Mr. McAllister introduced Mr. Fotenos. Mr. Fotenos reported on the status of the project.
 5. Corp. Code Sections 191 and 600(b) Amendments: Mr. McAllister introduced Mr. Stokdyk. Mr. Stokdyk reported on the status of the project and introduced Mr. Delfino. Mr. Delfino reported on the status of the project.
 6. Securitization Amendments: Mr. McAllister introduced Mr. Stokdyk. Mr. Stokdyk reported to the committee that the Asset Backed Securities laws of Delaware and South Dakota were being considered.
 7. Uniform Securities Act Amendments: Mr. McAllister introduced Mr. Hiraide. Mr. Hiraide informed the committee that he had learned that 12 lawyers at DOC were looking at the Model Act and Mr. Hiraide described the process for review and comment on the proposed amendments. Mr. Hiraide reported that DOC would provide recommendations to the administration, and then a draft is expected to be released for public comment, which would be a several month process, and that 18 months to 2 years is the anticipated time for implementation. Mr. Hiraide informed the committee that he expected the public comment period to begin this summer.
- Mr. McAllister suggested that the USA Subcommittee look closely at the issue of whether options were proposed to be treated or exempt differently than currently treated and exempt under Section 25102(o).
8. Close Corporation Model Supplement Adoption. Mr. McAllister introduced Mr. Serepca. Mr. Serepca committed to following up after the meeting with Mr. Fotenos concerning the project.
 9. BLN Article re SOX and State Law Conflicts: Mr. McAllister reported in the absence of Mr. Wood that the project was moving along.
 10. BLN Article re 1306: Mr. McAllister reported that the project was moving along.
 11. Annotations to National Venture Capital Association Model Forms: Mr. McAllister introduced Mr. Skinner. Mr. Skinner informed the committee that a subcommittee had been formed and was working on converting the model

documents into those that could be used by a California corporation. Mr. Skinner informed the members present that the subcommittee was working to produce first drafts for subcommittee review by April.

IV. SUBCOMMITTEE REPORTS

1. Legislation: Mr. McAllister reviewed his experience in and the timeline for getting a bill through the legislative process, including the process steps for the committee, the Executive Committee, other committees, advisors, the Board of Governors, Larry Doyle, a sponsoring legislator, the Legislature and the Governor. Mr. McAllister informed the members present that completion of committee proposals by April or May is necessary for Executive Committee approval by June for Board of Governors consideration and approval later in the year. Mr. McAllister further informed the members present that the bills may then appear on the legislative calendar in the following February. Mr. Stokdyk informed the committee that the legislative session and monitoring of new bills for the term was just commencing and that he was anticipating a flurry of activity at the end of January and in February.
2. Communications: Mr. McAllister introduced Mr. Hsu. Mr. Hsu reported to the committee on the status of the committee's website.
3. Education/Publications: Mr. McAllister introduced Ms. Weakley. Ms. Weakley reported to the committee that she was working on the selected developments project and that she had received comments from various members. Ms. Weakley reported that, following the meeting, a revised draft would be circulated for proposed final approval with submission to be made by January 31, 2005. The members present discussed the draft, including certain of the cases reported in it. Ms. Weakley next answered questions from members concerning the draft and timing issues.

Mr. McAllister introduced Ms. Shugart. Ms. Shugart reported to the committee that the deadline to submit ideas for the committee's annual meeting programs was the end of January. The members present suggested and discussed various ideas for programs at the annual meeting, including programs concerning executive compensation, stock options and FASB issues, the USA amendments, the Guide to Organizing a California Corporation, Section 1306, and the venture capital forms. Ms. Shugart informed the committee that outlines would be due by end of May and that materials would be due by August.

Ms. Shugart next discussed the status of implementing webcasts of committee programs. The members present discussed webcasting programs.

V. **OTHER BUSINESS**

Mr. McAllister called for other business. Mr. Fotenos reviewed new developments in the WorldCom case concerning director liability. Mr. McAllister asked if the members present believed that public boards were more engaged recently with management and the members present gave their impressions.

The meeting was adjourned at approximately 12:30 p.m.



Curt C. Barwick, Co-Secretary
As to Parts I and II



David M. Serepca, Co-Secretary
As to Parts III, IV and V